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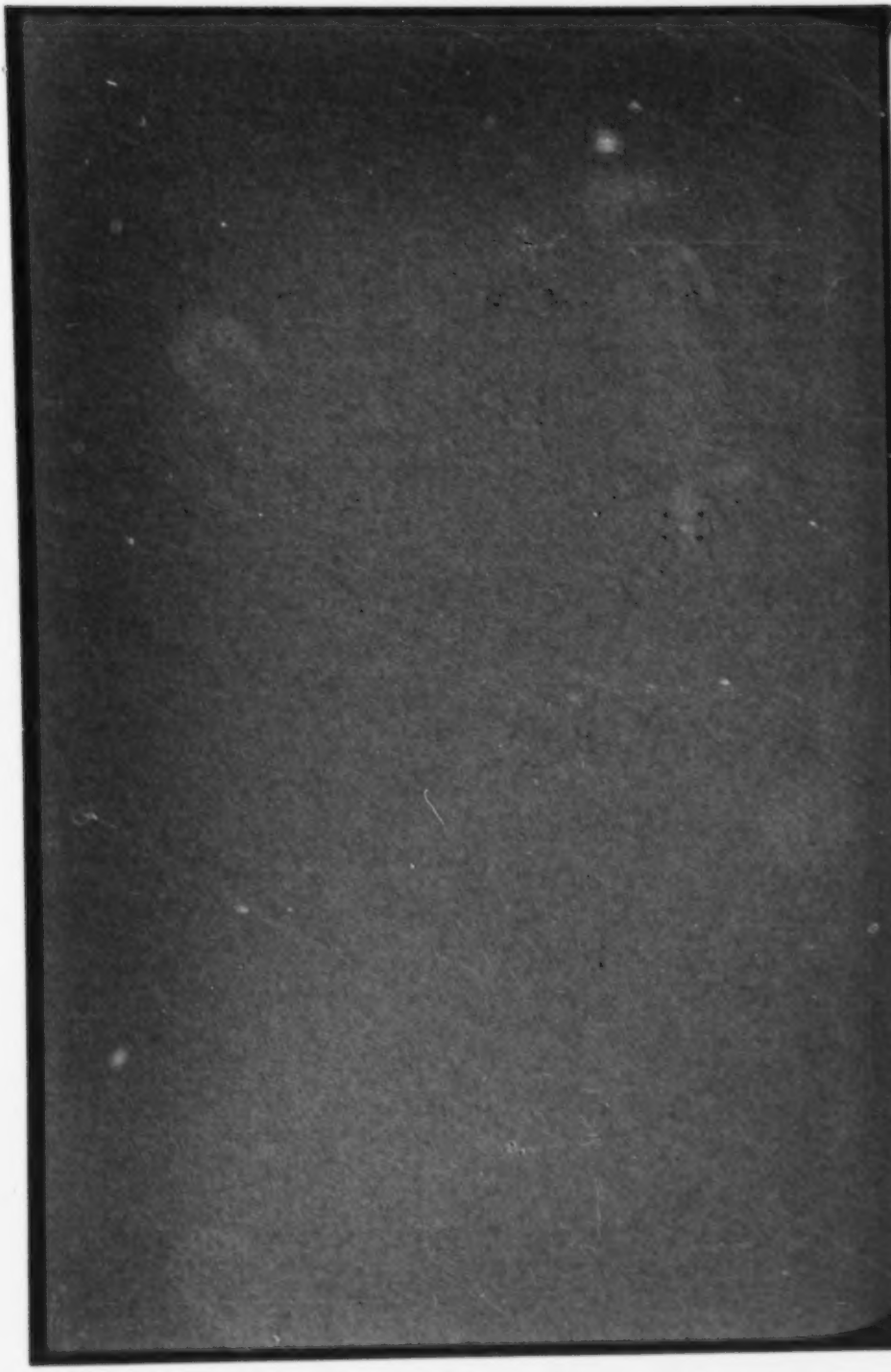

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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1945

No. 695

ROY D. KEEHN,
as Receiver of Central Mutual Insurance Company of Chicago, an Illinois Corporation,
Petitioner,

vs.

CHARLES J. ROGERS, INC.,
a Michigan Corporation,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I

STATEMENT OF THE CASE

The Respondent Corporation was the holder of a policy of automobile insurance issued by Central Mutual Insurance Company of Chicago for a period of one year commencing on April 24, 1936 and ending on April 24, 1937. The policy was cancelled by agreement of the parties on October 10, 1936 (4, 6). In the forepart of 1937 pursuant

to the petition of the Attorney General of Illinois, a decree was entered finding the present petitioner insolvent and a receiver was appointed by the Illinois court to take possession of the assets of the company and to liquidate its business. In the early part of 1938 a petition was filed by the receiver so appointed by the Illinois court praying for right and leave of the court to levy an assessment in an amount of 100% of the premium stated in the policy against the policyholders who "on January 31, 1935 to January 11, 1937, both inclusive, were holders of policies." An order was entered granting said petition and the said order was affirmed on appeal. *People ex rel. Palmer v. Central Mutual Insurance Company of Chicago*, 313 Ill. App. 84.

An assessment was accordingly made against the present respondent in the amount of $6,116.16 (8-9). No demand for payment of this assessment was made until April 11, 1941 when the present petitioner demanded payment of the assessment from the respondent (21).

The policy of insurance between the parties was issued in Michigan (23). The policy provides: "Any and all provisions of this policy, which are in conflict with the statutes of the state wherein this policy is issued are understood, declared and acknowledged by this company to be amended to conform to such statutes" (23).

The petitioner instituted suit to collect the assessment against respondent in the Circuit Court for the County of Wayne, Michigan, on June 17, 1943. The respondent contested the suit and pleaded that the cause of action was barred by the provisions of *Section 12660 C.L. Mich.-'29 (6)*, reading in part as follows:

> "If at any time the admitted assets are less than the reserve and other liabilities, the company shall immediately collect upon policies with a contingent premium a sufficient proportionate part thereof to restore such assets, provided *no member shall be liable for any part of such contingent premium in excess of the amount demanded within one year after the termination of the policy.*" (Italics ours.)

The trial court entered a judgment against respondent and on appeal to the Supreme Court of Michigan the judgment was vacated, without a new trial. The court's opinion is reported in 311 Mich. 416.

II

ARGUMENT

Summary of the Argument

A. The assessment, or order of the Illinois Court, which petitioner claims to be relying upon, was not a judgment against anyone. The order did not undertake to determine the question whether the respondent, or any other policyholder, was or was not liable in any amount. Therefore, the Michigan court, by sustaining the defense of the statute of limitations, did not deny to the judicial proceedings of Illinois, the full faith and credit to which it was entitled under the constitution of the United States. The respondent does not attack the Illinois decree in any manner whatsoever and when the Michigan court interpreted the Illinois law, no question arose under the full faith and credit clause of the Federal Constitution. These questions have been decided in favor of the respondent by previous adjudications of the Supreme Court of the United States and this court has no juris-

diction, therefore, to grant a writ of certiorari in this case and the petition for the writ should be denied.

B. The limitation of actions is governed by the *Lex Fori* and is controlled by the legislation of the State of Michigan in which the action was brought, as construed by the Supreme Court of Michigan. The Michigan Supreme Court properly construed the statute of limitations applicable to the present case and such construction is final and conclusive and does not infringe on any rights of the petitioner under the constitution of the United States. The Michigan Supreme Court in this case construed the one-year statute of limitations to be reasonable and petitioner has been unable to cite any adjudicated cases to the contrary. Therefore, the petition for writ of certiorari should be denied.

C. The petitioner's suit was based upon a contract and not upon a judgment and the liability involved is contractual and not statutory. This has been so held by this court and by the Illinois court. Therefore, the petitioner's only cause of action against the respondent is upon the contractual obligation arising under the policy of insurance.

D. The respondent is entitled to maintain any defense personally available to it against the assessment or order of the Illinois court. The defense of the statute of limitations in a similar case has previously been upheld by the Supreme Court of the United States.

A

The Assessment or order was not a judgment against anyone and the Michigan Court, by sustaining the defense of the Statute of Limitations, did not deny to the judicial proceedings of Illinois the full faith and credit to which it was entitled under the Constitution of the United States.

Counsel for petitioner have been unable, apparently, to perceive that the decree of the Illinois Court in the case of *People ex rel. Palmer v. Central Mutual Insurance Company of Chicago,* 313 Ill. App. 84, does not adjudicate the individual liability of this respondent. Counsel for the petitioner have proceeded throughout this case on the erroneous basic assumption that the decree of the Illinois Court determines the liability of this respondent and that all it was necessary to do was to plead this Illinois decree and the assessment made pursuant to it in the proceedings in Michigan against this respondent. In fact, counsel for petitioner, throughout their brief have referred to the Illinois proceedings in one instance as an assessment and another instance as a judgment.

Our position that the Illinois proceedings is not such a proceedings as is entitled to full faith and credit under the Federal Constitution insofar as the individual liability of policyholders is concerned is fully sustained by the case of *Great Western Telegraph Company v. Purdy,* 162 U. S. 329. This was a case in which an action was brought against the defendant in Iowa by the receiver of the Great Western Telegraph Company to recover an amount alleged to be due from the defendant to the company under the defendant's subscription to its stock and under a decree of the Circuit Court of Cook County in the State of Illinois, which ordered an assessment upon the stockholders of the company. The trial court in Iowa gave

judgment for the defendant. The plaintiff appealed to the Supreme Court of Iowa, which affirmed the judgment upon the ground that the action was barred by the statute of limitations. The case was then brought before the Supreme Court of the United States, which said, beginning on Page 336:

> "The question therefore is of the effect, as against Purdy, of an order for an assessment made by the Illinois court in a proceeding to which the corporation was a party, but to which he personally was not.
>
> "The order of that court was in effect, as it was in terms simply a 'call or assessment' upon all stockholders who had not paid for their shares in full. It was such as the directors might have made before the appointment of a receiver; and in making it the Court, having by that appointment assumed the charge of assets and affairs of the corporation, took the place and exercised the office of the directors. *Scovill v. Thayer*, 105 U. S. 143, 155 (26: 968, 974); *Hawkins v. Glenn*, 131 U. S. 319, 329 (33: 185, 191); *Lamb v. Lamb*, 6 Biss. 420, 424; *Glenn v. Saxton*, 68 Cal. 353; *Great Western Teleg. Co. v. Gray*, 122 Ill. 630, 636, 640; *Great Western Teleg. Co. v. Loewenthal*, 154 Ill. 261.
>
> "The order of assessment, whether made by the directors as provided in the contract of subscription, or by the Court as the successor in this respect of the directors, was doubtless, unless directly attacked and set aside by appropriate judicial proceedings, conclusive evidence of the necessity for making such an assessment, and to that extent bound every stockholder, without personal notice to him. *Hawkins v. Glenn*, 131 U. S. 319 (33: 185); *Glenn v. Liggett*, 135 U. S. 533 (34: 264); *Glenn v. Marbury*, 145 U. S. 499 (36: 790).

"*But the order was not, and did not purport to be, a judgment against anyone.* It did not undertake to determine the question whether any particular stockholder was or was not liable in any amount. It did not merge the cause of action of the company against any stockholder on his contract of subscription, nor deprive him of the right, when sued for an assessment, to rely on any defense which he might have to an action upon that contract.

"In this action, therefore, brought by the receiver in the name of the company, as authorized by the order of assessment, to recover the sum supposed to be due from the defendant, he had the right to plead a release, or payment, or the statute of limitations, or any other defense, going to show that he was not liable upon his contract of subscription.

"In each of the three cases last cited above, the defense of the statute of limitations was entertained and passed upon. *Hawkins v. Glenn,* 131 U. S. 322 (33: 192); *Glenn v. Liggett,* 135 U.S. 547 (34: 268); *Glenn v. Marbury,* 145 U.S. 506 (36: 793).

"The whole effect of the order of assessment being to fix the amount which any stockholder liable under his contract of subscription should pay, and to authorize the receiver to bring suits against stockholders for the same, but not to determine whether the present defendant, or any other particular stockholder, was liable for anything, *the Iowa Court, by sustaining the defense of the statute of limitations, did not deny to the judicial proceedings of Illinois the full faith and credit to which it was entitled.*" (Italics ours.)

In the same case this Court further said on Page 338:

"This action was not brought on a judgment, for there had been no judgment, but it was brought on

> the defendant's written contract of subscription and was therefore, by the terms of the Iowa statute, barred in ten years after the cause of action accrued. The action was brought more than ten years after the contract, but within ten years after the order of assessment."

And this Court further said on the same page:

> "But the Supreme Court of Iowa in the present case held that, as it rested with the directors of the corporation to make that order, the delay in making it could not suspend the operation of the statute of limitations; and that the case was within the rule, established by a series of decisions of that court, that when a plaintiff could at any time, by making a demand or giving a notice, acquire a right to recover against the defendant, the statute of limitations began to run when he might have done so. *Great Western Teleg. Co. v. Purdy*, 83 Iowa, 430, 433, and cases cited."

And this Court further said on Page 339:

> "The limitation of actions is governed by the *lex fori*, and is controlled by the legislation of the state in which the action is brought as construed by the highest court of that state, even if the legislative act or the judicial construction differs from that prevailing in other jurisdictions. *McElmoyle v. Cohen*, 38 U.S. 13, Pet. 312 (10: 177); *Bauserman v. Blunt*, 147 U.S. 647 (37: 316); *Metcalf v. Watertown*, 153 U.S. 671 (38: 862); *Balkam v. Woodstock Iron Co.*, 154 U.S. 177 (38: 953).
>
> "Neither the statutes nor the decisions of the State of Iowa upon this subject have made any discrimination against the citizens, the contracts or the judgments of other states, or against any right asserted under the constitution or laws of the United States. The case is thus distinguished

from *Christmas v. Russell,* 72 U.S., 5 Wall 290 (18: 475), cited at the bar.

"The question of what time the cause of action accrued in this case, within the meaning of the statutes of limitation of Iowa was not a Federal question but a local question, upon which the judgment of the highest court of the state can not be reviewed by this court.

JUDGMENT AFFIRMED."

We have quoted from the above case at great length because we believe it is exactly in point with the case at bar. As the question which petitioner seeks to have this Court review by certiorari has already been decided by this Court adversely to petitioner, the petition for writ of certiorari should be denied.

Counsel for petitioner still are under the impression that the respondent is attacking the Illinois decree in some manner. This, of course, is entirely incorrect. We concede that the assessment was made in accordance with the Illinois Law. Respondent, however, does contend that the assessment cannot be enforced against it because of the provisions of the Michigan Law, to which the Central Mutual Insurance Company of Chicago subjected itself by its contract, which point will hereinafter be discussed in this brief.

The fallacy of the petitioner's argument is clearly discernible when we look to the effect of the Illinois decree. If this respondent had been a resident of Illinois, execution and garnishment could not have been maintained against it upon the assessment alone or upon the decree alone. In fact, the decree was entered before the assessment was made. Under the Illinois practice there was no necessity of a decree to determine the assessment until

the insolvency of the Central Mutual Insurance Company of Chicago. As the Illinois Supreme Court stated in *People ex rel. Palmer v. Central Mutual Insurance Company of Chicago,* 313 Ill. App. 84 on Page 101:

> "It is conceded, of course, that the directors could have levied the assessment before the company's insolvency, but they failed to do so."

Upon the insolvency of the Central Mutual Life Insurance Company of Chicago, the receiver, who was appointed by the Illinois court, simply asked permission of the Court to make an assessment against the policyholders which the directors of the company had failed to do. All that proceedings in the case of *People ex rel. Palmer v. Central Mutual Insurance Company of Chicago,* 313 Ill. App., determined was that the receiver had the right to make such an assessment.

Under the Illinois law it was then necessary, in case any of the policyholders failed to pay such assessment, to institute suit against the individual policyholders, so failing to pay, to enforce the assessment. The *Illinois Revised Statutes* '37, Chapter 73, Section 17 (in effect July 1, 1936), provides:

> "Suits at law may be brought by the company against any member of such company who shall neglect or refuse to pay any assessment made upon him by the provisions of this Act; * * *."

That this is the proper procedure to enforce the assessment, in Illinois is shown by *Western Manufacturers' Mutual Insurance Company v. Rowell Elevator Co.,* 94 Ill. App 16 in which it is stated:

> "This was an action of assumpsit by plaintiff in error against defendant in error to recover an as-

> sessment made against the defendant by decree of the Superior Court of Cook County in a chancery case pending in that court in which the Western Manufacturers' and Mutual Company was a party."

This was an action brought to enforce an assessment against the holder of a policy of Mutual Insurance and to the same effect see *Western Manufacturers' Mutual Insurance Co. v. Hutchinson Cooperage Co.*, 92 Ill. App. 1.

This court said in the case of *Western L. Indemnity Co. v. Rupp*, 236 U. S. 261 on page 275:

> "It is earnestly argued that the court erred in its construction of the Illinois statute. We do not pass upon this question, deeming it to be outside the limits of our jurisdiction; for it is settled that where, in a state court, the validity of an act of the legislature of another state is not in question, and controversy turns merely upon its interpretation of construction, no question arises under the 'full faith and credit' clause of the Federal Constitution." (Citing numerous cases.)

The Michigan court having construed the law of Illinois in reference to the statutes of that state giving the receiver a right to make an assessment, the United States Supreme Court has no jurisdiction to pass upon such construction by the Michigan Supreme Court.

B

The limitation of actions is governed by the Lex Fori, and is controlled by the legislation of the state in which the action is brought, as construed by the highest court of that state, and such construction in the present case does not infringe on any rights of the petitioner under the constitution of the United States.

The Michigan General Mutual Insurance Law (*Michigan Compiled Laws 1929 Section 12669*) provides, in part, as follows:

> "Any mutual insurance company organized outside this state . . . shall be admitted and licensed to transact the kinds of insurance authorized by this Charter or Articles of Association *to the extent and with the powers and privileges specified in this chapter . . .*". (Italics ours.)

The provision of *Section 12660 of the Compiled Laws of Michigan* for 1929, reads, in part, as follows:

> "Provided no member shall be liable for any part of any such contingent premium in excess of the amount demanded within one year after the termination of the policy."

The Michigan Supreme Court, in the present case, determined that the above statutory provisions applied to the petitioner and barred his cause of action in Michigan. This construction of the Michigan Statutes is final and conclusive.

As was stated by this court in the case of *Great Western Teleg. Co. v. Purdy*, 162 U.S. 329 (supra) on page 338:

> "But the Supreme Court of Iowa in the present case held that, as it rested with the directors of the

corporation to make that order, the delay in making it could not suspend the operation of the statute of limitations; and that the case was within the rule established by a series of decisions of that court, that when a plaintiff could at any time, by making a demand or giving a notice, acquire a right to recover against the defendant, the statute of limitations began to run when he might have done so. *Great Western Teleg. Co. v. Purdy*, 83 Iowa 430, 433, cases cited.

> "*The limitation of actions is governed by the Lex Fori, and is controlled by the legislation of the state in which the action is brought, as construed by the highest court of that state, even if the legislative act or the judicial construction differs from that prevailing in other jurisdictions. McElmoyle v. Cohen*, 38 U.S. 13 Pet. 312 (10: 177); *Bauserman v. Blunt*, 147 U.S. 647 (37: 316); *Metcalf v. Watertown*, 153 U.S. 671 (38: 862); *Balkam v. Woodstock Iron Co.*; 154 U. S. 177 (38: 953)." (Italics ours.)

Petitioner argues that *Section 12660 of the Compiled Laws of Michigan for 1929* is not a true statue of limitations on the ground that it is not a part of the provisions of the Michigan Statutes relating to the limitation of actions in general. That this argument is not tenable is clearly shown by the fact that there are many limitations of actions relating to special causes of action which are not a part of the Michigan Statute relating to the limitation of actions in general. Other special limitations of actons in effect in Michigan are as follows:

> "*Compiled Laws of Michigan 1929 Section 12758*, providing for limitation of actions for a period of two years in a suit to annul a marriage on the ground of physical incapacity on the part of one of the parties; Compiled Laws of the State of Mich-

> igan for 1929 Section 9784 providing a limitation of actions for a period of two years to recover damages under the so-called "Blue Sky Law"; Compiled Laws of Michigan 1929 Section 13135 providing for a limitation of action for a period of one year on bond of a contractor engaged on public improvement to pay for material and labor."

These statutes are only a few of the many statutes of limitations in Michigan that are not included in the general provisions of the statute of limitation of personal actions, *Compiled Laws of Michigan 1929 Section 13976.* This last quoted statute is a statutory provision to cover the limitation of actions not otherwise specifically provided for. We merely quote these other sections to refute the argument made by counsel for the petitioner that because the section applied by the Michigan Supreme Court in the present action is not a part of the general statute of limitations, that it is not a true statute of limitations.

Counsel for petitioner have not cited one case holding that a statute of limitations for a period of one year is unreasonable. The cases cited by petitioner are those in which the Legislature enacted a law which cut off a remedy entirely and this is not the situation here. In fact such a period of time for a statute of limitations was passed upon in only one case, other than by the Michigan Supreme Court, being the case of *Call v. Hagger,* 8 Mass. 423 in which the Court said on page 430:

> "The defendants have relied on another point in this cause, having cited the statute of 1809, c. 33, Sec. 2, by which suits on prison bonds are limited to one year after the breach; and it is agreed that this action was not commenced until more than a year from the breach alleged.

> The plaintiff objects to this act, as being void by the provision of the federal constitution, which declared that 'no state shall pass any *ex post facto* law, or law *impairing the obligation of contracts.*'— If the legislature of any state were to undertake to make a law, preventing the legal remedy upon a contract lawfully made and binding on the party to it, there is no question that such legislature would by such act exceed its legitimate powers. Such an act must necessarily impair the obligation of the contract, within the meaning of the constitution; and the courts of law would be found, therefore, to consider it as a void act of legislation, and as having no force or authority. But to extend this principle to acts for the limitation of suits at law, which, when enacted with a due discretion, and a reasonable time allowed for the commencement of suits on existing demands, are wholesome and useful regulations, would be extravagant. It must be left to the discretion of the legislature to fix the proper limitations. In the case under consideration, *the term of a year is not, in our opinion, unreasonably short.*" (Italics ours.)

In the case of *Barker v. Jackson*, 1 Paine 559, the court said on page 570:

> "Nor does this Act violate that provision of the constitution of the United States which prohibits the states from passing any law impairing the obligations of contracts. Statutes of limitations relate to the remedy and not to the obligation of a contract. This distinction is well settled by the decision of the Supreme Court of the United States; and that *the state legislature may pass such laws, under such modification as their wisdom should direct, without infringing the constitution of the United States.*" (Italics ours.)

In the case of *Price v. Hopkin,* 13 Mich. 318, the court said on page 324:

> "The general power of the legislature to pass statutes of limitation is not doubted. The time that these statutes shall allow for bringing suits is to be fixed by the legislative judgment, and where the legislature has fairly exercised its discretion, no court is at liberty to review its action, and to annul the law, because in their opinion the legislative power has been unwisely exercised."

A six-month period of limitations was upheld by the court in the case of *Beuthien v. Dillon,* 160 Mich. 396 where the court said beginning on page 399 and continuing on page 400:

> "If the foregoing act is constitutional, the appellants have no standing. This statute received consideration by the court, in *People v. Christian,* 144 Mich. 247 (107 N.W. 919), when Mr. Justice Grant, speaking for the court, said:
>
> > 'The statute (Act No. 84, Pub. Acts 1903) imposes a limitation to the right to bring suit to six months from the time the act took effect. The act took effect in September, 1903. A like statute of limitations was held valid by this court. *Semer v. Auditor General,* 133 Mich. 569 (95 N.W. 732).' "

What counsel for petitioner fail to understand is that the directors of the Central Mutual Insurance Company of Chicago could have given notice to the respondent after the policy of insurance between the parties terminated and before the receivership proceedings and had several months so to do. Thereafter the receiver could have given such notice. The Michigan Statute of Limitations applicable to this situation merely provides that

each member (policyholder) should not be liable in excess of the amount demanded within one year. There was nothing at all to prevent the directors or receiver from demanding from the respondent the full (100%) assessment. If the receiver had done this, it could have been left to the Illinois court to later determine whether such an assessment was necessary or not and in what amount. Therefore, the reason that counsel for petitioner use is untenable as applied to the situation between the parties to this case and there could be no possible contention but that the Central Mutual Insurance Company of Chicago or the receiver had a reasonable time within which to give notice to the respondent.

Counsel for petitioner argue that the Michigan Statute of Limitations applicable to this case is unreasonable in period of time. The Michigan Statute allows one year. Could counsel possibly argue that the period of time would be unreaonable if the time allowed by the statute was two years or three years or four years? As a matter of fact, the policy was terminated on October 10, 1936 (4, 6) and demand was not made until April 11, 1941. This was some four years and six months after the termination of the policy. The only period of limitations that could possibly permit respondent to maintain its action would be one for a period of five years or longer. Certainly if the period of limitations had been four years counsel for respondent could not successfully contend that it was only equivalent to 24-hour notice, as argued in their brief, so that the question of whether the period of the Michigan Statute of Limitations of one year is unreasonable is a moot question insofar as a reasonable length of time is concerned.

C

Petitioner is suing upon a contract and not upon a judgment and the liability involved is contractual and not statutory.

The respondent entered into a contract of insurance with the Michigan Mutual Insurance Company of Chicago on April 24, 1936. If this contract had not been made between the parties there would have been no liability on the part of the respondent for any assessment whatsoever. The petitioner receiver levied an assessment against this respondent based on the respondent's contractual liability on the policy here in question. In the case of *Miller v. Central Mutual Company of Chicago*, 313 Ill. App 84, which affirmed the decision of the lower court in authorizing and directing an assessment, the court based the right to assess upon the contractual rights of the parties and held that the receiver had no other or greater right to make an assessment than was passed by the directors of the company itself. The court cited with approval the case of *Rolfe v. Rundle*, 103 U.S. 222, and said:

> "The salient fact that policyholders have contingent liabilities, contractual in their nature, assumed by them when they became members, fixed by statute, by-laws and policies, which constitute assets of the company to be collected in the course of liquidation, underlies the various theories upon which the courts have upheld assessments, whether levied by the directors of insurance, receivers or liquidators, under the court's direction. Being assets which pass to the receiver, he is delegated to deal with them 'in his own name as receiver or in the name of such company, as the court may by order direct, and as such receiver (he) shall be vested by operation of law with title to all the property, contracts and rights of action * * * as

> of the date of the order so directing liquidation' (par. 498, ch. 73, Ill. Rev. Stat. 1935). Because of those circumstances, *the levy of an assessment on policyholders is nothing more nor less than the exercise, by the receiver, of contractual rights* vested in him by the liquidation decree, and amounts to no more than a demand for payment of the contingent liability which they assumed; and the levy is, in essence, a demand by the receiver of the assets in liquidation, title to which was vested in him, for payment of this liability." (Italics ours.)

Therefore the petitioner is arguing adversely to the decisions of the courts which appointed him in making any claim that any possible liability of the respondent is statutory and not contractual.

Petitioner's argument that he is suing on a judgment is clearly refuted by the decision of this court in *Great Western Teleg. Co. v. Purdy*, 162 U.S. 329 (supra), from which we beg leave to again quote from page 36 of that opinion wherein this court, speaking of the assessment made by the Illinois Court stated:

> "*But the order was not, and did not purport to be, a judgment against anyone.* It did not undertake to determine the question whether any particular stockholder was or was not liable in any amount. It did not merge the cause of action of the company against any stockholder upon his contract of subscription, nor deprive him of the right, when sued for an assessment, to rely on any defense which he might have to an action upon that contract." (Italics ours.)

And in the same case this court further said on page 338:

> *"This action was not brought on a judgment, for there had been no judgment, but it was brought on the defendant's written contract of subscription* • • •." (Italics ours.)

Therefore, as the petitioner had no judgment against the respondent he could not possibly be suing upon a judgment and his suit is simply upon a contract as held in the *Illinois* case above cited.

Point D

Respondent is entitled to maintain any defense personally available to it against the assessment.

In view of the case of *Great Western Teleg. Co. v. Purdy,* 162 *U.S.* 329 (supra) in referring to the suit by the receiver to recover on assessment where this court stated on page 336:

> "In this case, therefore, brought by the receiver in the name of the company, as authorized by the order of assessment, to recover the sum supposed to be due from the defendant, he had the right to plead a release, or payment, or the statute of limitations, or any other defense going to show that he was not liable upon his contract of subscription."

We feel that the argument of counsel for petitioner that "Michigan members of the company should not be exempted from the obligation to pay assessments which the courts have enforced against the members in other states" does not need an answer other than this.

CONCLUSION

It is therefore respectfully submitted that this case is not a proper one for a review by certiorari in this court, and that the petition for a writ of certiorari should be denied.

Dated: January 12, 1946.

LAWRENCE E. KELLY,
HOWARD L. ELLIS,
Counsel for Respondent.